IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

CRL.A.No. 736 of 2000()

CC.193/1996 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY

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APPELLANT:

PROF.M.G.GEORGE,
S/O.REV.FR.GEEVARGHESE,
MURIMATTATHIL HOUSE,
KOLENCHERRY.

BY ADV. SRI.P.JACOB VARGHESE
SMT.V.A.GANGUJA
SRI.P.T.ARUNKUMAR

RESPONDENTS:

O.P.RAPHEL, S/O.PAILY,
OLATTUPURATHU HOUSE,
MUNAMBAM POST,
PUZHUPPILLI VILLAGE,
KOCHI TALUK.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI
SRI.S.R.DAYANANDA PRABHU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.736 of 2000-D

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Dated this the 5th day of September, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.193/1996 with respect to the offence under Section 138 of the Negotiable Instruments Act, in which the accused stands acquitted.

2. The case of the complainant is that the accused has issued the impugned cheques, two in number, one for Rs.1,25,000/- and another for Rs.1,50,000/-, dated 26/11/1995 and 31/01/1996 respectively, towards discharge of liability for the purchase of a fishing boat from the complainant, as per agreement dated 18/11/1995, fixing the price of the boat at Rs.3,75,000/-. Only rupees one lakh was paid in cash. The cheques when presented got dishonoured for want of funds in the account of the accused. A lawyer notice demanding payment was issued, which was replied to with incorrect averments.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P11. Defence examined DW.1 the accused, DWs.2 and 3 and got marked Exts.D1 to D5. Defence case is

that as per Ext.P11 agreement, the complainant was bound to clear the liabilities existing on the boat and then handover the title deed of the boat, and that the complainant failed to do so and that the accused had to pay the outstanding liability to the Syndicate Bank to the tune of Rs.2,35,419/-. It is his case that he has paid Rs.26,000/- to one Tharakan and Rs.7,500/- to boat watchers. The accused has also produced Exts.D1 to D3 receipts which would show that he remitted the amount due towards the bank. It is also stated that he has sent notices to the complainant directing him to clear the bank dues. It was not replied to. DW.2 is the Bank Manager who has testified in support of the above case set up by the defence. DW.3 is the registered owner of the boat. He has also testified as to the liability that was in existence. Tharakan was the broker. It is seen that the payment of Rs.26,000/- to Tharakan and Rs.7,500/- to boat watchers as deposed to by DW.1, the accused, was not challenged in the cross-examination.

I find that the court below has examined in detail the above aspects and has found that the accused has established the case set

up. In the circumstances, I find no reason to interfere with the findings of the court below. The criminal appeal is dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.736 of 2000-D

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J U D G M E N T

5th September, 2007